

PREVENTIVE LAW SERIES

# GUARDIANSHIP



Prepared by:  
Legal Assistance Department  
Naval Legal Service Office Southwest  
3395 Sturtevant Street Suite 2  
San Diego CA 92136-5072  
(619) 556-2211



## WHAT IS A GUARDIANSHIP?

A guardianship (of the person) is a legal procedure where the court gives parental rights and the obligations over a minor to a person other than the parent(s). The minor is called a "ward" and the adult appointed by the court is called a "guardian." In some jurisdictions (states) the courts use the words conservatorship and conservatee and conservator, respectively, but the terms are interchangeable. A guardianship of a person is a procedure that gives a non-parent custody of a child.<sup>1</sup> A guardianship of the estate is a procedure where the court gives a person, including a parent, the rights and obligations of a trustee to protect and account for the money of a minor child who receives social security benefits or is the recipient of a personal injury award or other legal action where money was obtained for the minor.<sup>2</sup>

## WHAT IS THE EFFECT OF A GUARDIANSHIP?

When a guardian (of the person) is appointed, the natural parents no longer have the right to determine where the minor will live and how he or she will be educated, and they do **not** have *custody* of their child. Instead, the guardian has those rights as well as the responsibility to make health care decisions for the minor child.

## HOW LONG DOES THE GUARDIANSHIP LAST?

A guardianship (of the person) continues until one of the following occurs:

1. the minor marries;
2. the minor reaches the age of majority (18) in California;
3. the minor finishes high school (if this occurs after turning eighteen (18) years of age); OR
4. the guardianship is terminated by the court upon the petition of an interested party. An interested party is the ward, a parent, a sibling, a family member such as an aunt, uncle, or grandparent, and in some instances, a creditor.

## WHO NEEDS A GUARDIANSHIP?

If a minor is living with you for a lengthy period of time and you are not the parent, you may need to petition for guardianship. If you do not, you may have problems enrolling the child in school, receiving public aid (if entitled), obtaining medical treatment, or adding the child to your health insurance or military dependency list. You may not need a guardianship if the stay with you will be temporary, the parent(s) have agreed to the stay, and health care is accessible. However, it would be wise to obtain a Power of Attorney (in loco parentis) from the parent(s).

## HOW DO I BECOME A GUARDIAN?

If you can afford to hire an attorney, do so. If you cannot afford an attorney, the San Diego Lawyer Volunteer Program (619) 235-5656 may be able to help you (if you meet low income criteria). You may also do it yourself by following these steps:

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<sup>1</sup> <http://www.courtinfo.ca.gov/selfhelp/family/guardianship/general-2.htm>

<sup>2</sup> <http://www.courtinfo.ca.gov/selfhelp/family/guardianship/general-2.htm>

1. Go to the Probate Business Office (1409 Fourth Avenue, 3<sup>rd</sup> Floor, San Diego) and pick up a Guardianship packet from the clerk's office. You can also find the packet at the following link:

<http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/FORMS/FAMILYANDCHILDRENFORMS/PKT012.PDF>

2. Read the instructions carefully and fill out the appropriate forms. An attorney at RLSO SW can assist you with those forms.

3. File the petition with the Court. There will be a filing fee of \$435. If you cannot afford this, you may qualify for a *waiver* of the filing fee. There will be a form in the Guardianship packet to fill out and submit to see if you are eligible for the waiver.

4. Give the required notices (as explained in the Guardianship packet).

5. Complete the investigation procedure (the Court will explain this).

6. Appear at the Court hearing; and

7. File the written order with letters of guardianship with the Court.

#### **HOW DO I GET A GUARDIANSHIP TODAY?**

If circumstances require that you get a guardianship *immediately*, the Court may appoint you as a temporary guardian while waiting for the hearing on permanent guardianship, if:

1. There is an **immediate AND compelling need** for the guardianship;

2. There is **good cause to waive notice to the parents (or the parents give their consent and waive notice)**; AND

3. The "Petition for Appointment of Permanent Guardian" is filed at the same time you apply for temporary guardianship.

If you meet the above criteria, you may present your petition for temporary guardianship to the Probate Examining Department of the Court during ex-parte hours. The forms packet will explain which forms to fill out.

Family Law Assistance Project at the Madge Bradley Building located at 1409 4<sup>th</sup> Avenue, San Diego California may be able to assist you with the forms and procedure.

#### **LEGAL ASSISTANCE SERVICES**

A legal assistance attorney is available on a walk-in basis Monday through Thursday from 0800 - 1030. Additionally, Tuesdays and Thursdays, attorneys are available from 1300 - 1430. Powers of attorney and notaries are available Monday through Thursday from 0800 - 1430, and Friday from 0800 - 0930. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Bldg 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

#### **RESOURCES**

Probate Examining Department of the Superior Court: San Diego (619) 236-3781, Vista (760) 940-4504.

San Diego Volunteer Lawyer Program: (619) 235-5656, [www.sdvlp.com](http://www.sdvlp.com)

San Diego County Superior Court: [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov)

California Courts Self-help Website: <http://www.courtinfo.ca.gov/selfhelp/family/guardianship/general.htm>

Nevada Guardianship Information: <http://www.familylawselfhelpcenter.org/self-help/guardianship>